IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 2 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MINOR CHANDRAKANT DAHYABHAI GUARDIAN OF DAYABHAI HARKISHAN & 2 - Appellant(s)
Versus
RAMANLAL DAHYABHAI & 2 - Defendant(s)

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Appearance :
MR HARSHADRAY A DAVE for Appellant(s) : 1 - 3.
MS SNEHA A JOSHI for Defendant(s) : 1, 3,
DELETED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/03/2007

ORAL JUDGMENT

1. One Ramanlal, son of Dahyabhai (son of the appellant No.1) filed a Civil Suit for partition of the joint family property, the suit was decreed and a preliminary decree

was framed. When the final decree proceedings were going on, the plaintiff made an application to the learned trial court that as he has spent an amount of Rs.10,000=00 (Rupees Ten Thousand only) to meet with the expenses of marriage of Padmaben, daughter of Dahyabhai, the said amount be awarded in favour of the plaintiff. The father i.e. the appellant No.1, his wife Jadiben and son Arvindbhai opposed the application and submitted that the plaintiff was not entitled to the said amount. After hearing the parties, learned trial court allowed the prayer being aggrieved by the said order, the judgment debtor / defendants preferred regular first appeal, the first appeal came to be dismissed, after hearing the parties, therefore, the appellants are before this Court.

2. The appeal has been admitted for hearing the parties on the following substantial question of law;

"(i) Whether the order below Ex.129 passed on 21/1/1984 by the 3rd Jt. C.J. (J.D.), Surat can be treated as a preliminary decree and whether appeal lies against such an order?

(ii) Does the order passed by the Trial Court below Ex.129 amount to modification of the preliminary decree passed in Civil Suit No.12 of 1971 and if so, whether such modification is permissible under the law?

3. So far as the first question is concerned, this Court must straightway say that the order dtd.21/1/1984 cannot be termed to be a preliminary decree nor it can be said to be a modification of the preliminary decree passed in the Regular Civil Suit. A preliminary decree simply decides the right of the parties, but the partition is to be effected after hearing the parties afresh, after setting and settling equities and their respective rights and liabilities. In the present case, if the learned Judge has held that the plaintiff is entitled to the said amount of Rs.10,000=00, which he spent in the marriage of the daughter of the appellant Nos.1 and 2, then, it cannot be said that the said plaintiff would not be entitled to anything, even otherwise, the order dtd.21/1/1984 would not amount to modification of the decree. However, without entering into the question on maintainability, I hold that the learned trial court was absolutely justified in directing the payment of Rs.10,000=00 which the plaintiff had

undertaken as expenses for marriage of the daughter of the appellant Nos.1 and 2.

4. I find no reason to interfere. The appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs.
5. Let the learned trial court be asked to proceed with the final decree proceedings as expeditious as possible, because the appellants are delaying the final decree proceedings unnecessarily.
6. Let a decree be framed accordingly.

(R.S. GARG, J.)

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